

EXHIBIT 39

**ATTORNEYS' EYES ONLY – SUBJECT TO SECOND AMENDED
CONFIDENTIALITY ORDER (DKT. 608)**

Report of David L. Yermack

Expert Witness for Defendants

Henry, et. al., v. Brown University, et al.,
United States District Court, Northern District of Illinois, Eastern Division,
Case No. 1:22-cv-00125

August 7, 2024

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funds compared to smaller non-profits, many of which take no distributions at all in order to let their endowments grow to a size where they might provide significant support in the future.

Endowment distributions tend to be larger in years when non-profits have operating deficits, especially for larger organizations. For art museums only, Yermack (2017) finds a strong association between new cash gifts to the organization and additions to its endowment fund, but a similar effect is estimated to be weak and not statistically significant in the broader universe of non-profits studied in Dahiya and Yermack (2021).

4. Limitations associated with endowment restrictions

40. Gifts placed in endowment funds are often “restricted” by their donors, meaning they are limited to specific purposes and/or for specific recipients, such as support of research and teaching in a certain academic discipline or dormitory space or recreational facilities for students. Universities cannot use the majority of restricted funds’ distributions for any purpose other than that determined by the donor, some of which are narrow and precise. Typically there are many thousands of accounts and sub-accounts in an endowment reflecting these restrictions. For instance, Penn’s 2022 Annual Report states that Penn’s endowment “comprises over 8,400 individual endowments,” of which 7,486 (roughly 89%) were donor-restricted.¹⁰ Cornell’s Consolidated Financial Statements for 2022 and 2021 refer to 7,944 “true endowment funds,”¹¹ and show that only 17.9% of its net endowment assets were unrestricted.¹²

¹⁰ Penn 2022 Annual Financial Report, <https://www.finance.upenn.edu/wp-content/uploads/Penn-Division-of-Finance-FY22-Annual-Report.pdf> (annual report at 10, financial statements at 8).

¹¹ Cornell 2021-2022 Consolidated Financial Statements at 48, <https://finance.cornell.edu/sites/default/files/cornell-financial-report-FY2022.pdf>.

¹² *Id.* at 46. Similarly, as of June 30, 2022, only 39.9% of Notre Dame’s endowment net assets were without donor restriction. Notre Dame 2022 Annual Report at 46, https://finance.nd.edu/assets/500538/nd_uar_2022.pdf. Georgetown University’s 2022 financial statements indicate that only 41.3% of its endowment net assets are held without donor restrictions. Georgetown 2021-2022 Consolidated Financial Statements at 25, <https://georgetown.app.box.com/s/it6xctkbtxy9lms0zilb2ns2p53oyc9>. Only 28% of MIT’s net endowment assets were without donor restrictions as of June 30, 2020. MIT 2022 Report of the Treasurer at 42, <https://vpf.mit.edu/sites/default/files/downloads/TreasurersReport/MITTreasurersReport2022.pdf>.

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41. Disaggregating university endowments across their individual schools or faculties demonstrates the constraints created by restrictions of endowment funds. For example, endowment documents produced by Penn in this litigation show that, as of June 30, 2022, 22.76% of the total market value of Penn's endowment was held by the Penn Health System, 15.48% by the Perelman School of Medicine, 9.28% by the Wharton School of Business, 6.72% by the School of Arts and Sciences, and 3% by the Carey School of Law, with other endowment funds restricted to a variety of other schools, resource centers, and university offices.¹³ Likewise, Dartmouth's 2022 Endowment Report shows that, as of 2022, 11% of Dartmouth's \$8.1 billion endowment was held by the Geisel School of Medicine; 7% by Tuck School of Business; 2.5% by Thayer School of Engineering; 1.2% by the Guarini School of Graduate and Advanced Studies; and the remaining 78% by Dartmouth College.¹⁴ Endowment funds held by a university health system or law school, for example, cannot be used to support undergraduate financial aid.

42. Relatedly, Figure 1¹⁵ shows information about the budgetary impact of Vanderbilt University's endowment distributions in 2013 and Harvard University's endowment distributions in 2022.¹⁶

43. Data in Figure 1 show a wide range of endowment support for different schools and/or faculties at these two universities. At Vanderbilt in 2013, the Divinity School obtained 62% of its budget from endowment distributions, while the Medical School obtained just 3%, and other faculties fell somewhere in between, including the Faculty of Arts and Sciences (home

¹³ PENN568-LIT-00159372.

¹⁴ Dartmouth Endowment Report 2022 at 2,

https://www.dartmouth.edu/finance/documents/financial_management_tab_documents/endowment_report_2022.pdf

¹⁵ All Figures and Tables discussed in this Report are presented in Appendix B to this Report.

¹⁶ As noted in the notes to Figure 1, the data for Harvard and Vanderbilt was readily accessible in documents cited in the expert report of Elizabeth Mora in this case, VANDERBILT-00031191 at page -197 and Harvard's 2022 Annual Report, at 6, https://finance.harvard.edu/files/fad/files/fy22_harvard_financial_report.pdf.

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of most Vanderbilt undergraduates) at 18%. At Harvard in 2022, the Divinity School obtained 71% of its budget from endowment distributions, the Faculty of Arts & Sciences (including the undergraduate college) obtained 52%, and the lowest faculties, Business and Public Health, each obtained 20%. These data indicate that universities often spend their endowment funds unevenly across their schools and faculties, a pattern that is consistent with donor restrictions limiting the financial flexibility of university leadership.

44. The importance of donor restrictions within Defendants' endowments can also be inferred from their balance sheets, as non-profit corporations issue annual financial statements that divide Net Assets between Restricted and Unrestricted uses. Net Assets by definition equals Assets minus Liabilities for the entire organization.

45. In principle, the Restricted Net Assets for a university might include not only funds in its endowment, but also other assets such as intellectual property or real estate. In practice, for most major universities, including the Defendants, the endowment fund usually comprises an enormous fraction of all the assets on their balance sheets, so that that the Restricted and Unrestricted Net Assets will mostly reflect restricted and unrestricted endowment.

46. Table 1 shows the amount of Restricted and Unrestricted Net Assets in 2022 for the 17 Defendants in this litigation. More than half of Net Assets are restricted for most Defendants, and for four the fraction of Net Assets that are restricted exceeds 80%. The data in the table plainly show that very significant portions of Defendants' Net Assets, running into the billions or tens of billions of dollars in the aggregate, have their uses restricted.

B. Prof. Bulman's analysis of Defendants' endowment investment returns is misleading due to the use of incomplete data, non-standard calculations, and a lack of appropriate context

47. Prof. Bulman presents data purportedly illustrating the investment returns and growth of Defendants' endowments between 1991 and 2022. In the passages below, I discuss